

Amendment No. 1 to SB1888

Harper
Signature of Sponsor

AMEND Senate Bill No. 1888*

House Bill No. 2118

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 18, is amended by adding Sections 2 through 23 of this act as a new part 2.

SECTION 2. This act shall be known and may be cited as the "Soil Scientist Licensure Act of 2008".

SECTION 3. The general assembly finds that the competent and proper application of soil science principles by soil scientists is vital to the lives, property, economy, security, and environment of the people of this state. In order to safeguard life, health, and property and to promote the public welfare, the practice of soil science in this state is hereby declared to be subject to regulation in the public interest. Furthermore, the practice of soil science is hereby declared a learned profession to be practiced and regulated as such, and its practitioners in this state shall be held accountable to the state and members of the public by high professional standards in keeping with the ethics and practices of other learned professions in this state. The purpose of this act is to introduce additional qualifying criteria in a professional field at present only partially regulated, thereby benefiting the safety, health, and property of the people of Tennessee and promoting the public welfare. The fields of soil science expected to benefit are those related to the environment, soil classification and mapping, the inventory of the soil as a resource, basic soil science research, and other soil science matters of concern to the people of this state. It is also the purpose of this act to differentiate the principles of soil science from the engineering, geology and surveying professions, including employees and subcontractors of persons engaged in such licensed professions, not to infringe upon such respected and established fields.

SECTION 4.

(a) As used in this part, unless the context otherwise requires:

(1) "Board" means the Registered Land Surveyors Board;

(2) "Classification" means the use and application of the USDA *Soil Taxonomy* standard, as revised; classifying soils to the order, suborder, great group, subgroup, family, series, or phase of series level;

(3) "Commissioner" means the commissioner of commerce and insurance, or the commissioner's designee;

(4) "Department" means the department of commerce and insurance;

(5) "Licensed professional soil scientist" means a person who is licensed as a soil scientist under the provisions of this part;

(6) "Practice of soil science" means providing soil science services except as specifically exempted by this part. Soil science services include the investigation, inspection, collection, or evaluation of soil as a means to classify soil pursuant to the use and application of the USDA *Soil Taxonomy* standard, as revised, or the interpretation, inventory, planning, mapping resulting from classifying soils;

(7) "Responsible charge of work" means accountable, independent control and direction by the use of initiative, skill, and independent judgment, of soil science work or supervision of soil science work; and

(8) "Soil science" means the science concerning the earth's mantle and its use by all humans including:

(A) The classification, investigation, mapping and inventorying of soil;

(B) The study of the interaction of soil forming factors:

(i) Climate;

(ii) Organisms;

(iii) Relief;

(iv) Parent Material; and

(v) Time;

(9) "Soil scientist" means a person qualified by education and practical experience to engage in the practice of soil science;

(10) "Soil scientist in training" means a person who has met or is pursuing the educational requirements of Section 10, but is not qualified to be licensed as a professional soil scientist;

(11) "Subordinate" means any person who assists a licensed professional soil scientist in the practice of soil science without assuming the responsible charge of work.

SECTION 5.

(a) No person shall:

(1) Classify soils pursuant to the use and application of the USDA *Soil Taxonomy* standard, as revised, prepare any soil maps, reports, or documents resulting from the classification of soils other than a licensed professional soil scientist or a subordinate under such soil scientist's direction;

(2) Practice soil science in this state unless such person is licensed under the provisions of this part. A certificate of licensure is not transferable;

(3) Offer to practice soil science in this state unless such person is licensed under the provisions of this part. To offer to practice soil science in this state includes the making of a verbal claim, displaying a sign or other advertisement, using letterhead, printing cards, or using in connection with a person's name any title or description stating or implying that the person is a licensed professional soil scientist;

(4) On or after January 1, 2009, seal or stamp any plans, plats, reports or other documents with the seal or stamp of a licensed professional soil scientist, or use in any manner the title "licensed professional soil scientist" or the title of any licensed certified specialty soil scientist unless licensed or licensed and certified under this part;

(5) Affix the person's signature, seal, or stamp to any maps, reports, or other documents after such person's licensure has expired or has been suspended or revoked unless such person's licensure has been renewed or reissued;

(6) Give any false or forged evidence of any kind to the board when seeking to obtain the person's certificate of licensure;

(7) Falsely impersonate any other licensee of like or different name; or

(8) Attempt to use an expired or revoked certificate of licensure or continue to practice soil science at any time during a period during which the board has suspended or revoked the person's certificate of licensure.

SECTION 6. This state and any county, municipality, agency, board, district, commission, authority, or other political subdivision of the state shall only contract for soil science services with persons licensed under this part or with a firm employing a licensed professional soil scientist who shall be in responsible charge of providing such services, except as otherwise provided by this part.

SECTION 7. Any person, except a person exempted by this part, who practices or offers to practice soil science in this state, including a person employed by the state or its political subdivisions, is subject to the provisions of this part. The following persons are exempt from the provisions of this part:

(1) Any person engaged solely in teaching the science of soil science or engaged solely in nonpublic soils research in this state. However, a teacher or researcher shall be certified as licensed professional soil scientist if the teacher or researcher wishes to engage in the practice of soil science or services for which licensure as a soil scientist is required by this part;

(2) An employee or subordinate of a licensed professional soil scientist insofar as the employee or subordinate acts solely in such capacity. This exemption shall not permit any such employee or subordinate to practice soil science independently or use the term "licensed professional soil scientist"; and

(3) Any person who is employed either by the state or federal government, or by a person, firm, or corporation not engaged in the practice of soil science if such person provides soil science services to the employer only and not to the general public.

SECTION 8.

(a) A sole proprietorship, partnership, or corporation that provides soil science services as defined in this part as its primary activity may engage in the practice of soil science, provided, that at least one (1) principal or officer is in responsible charge of such activity and is a licensed professional soil scientist. A sole proprietorship, partnership, or corporation whose primary activity is other than the practice of soil science may offer soil science services; provided, that a licensed professional soil scientist is in responsible charge of such activity. The exemptions in Section 7 shall apply to sole proprietorships, partnerships, and corporations.

(b) This part shall not be construed to prevent or to affect the practice of any profession or trade related to soil science for which a license or registration is required under any other law of this state; provided, that such work is permitted under the applicable licensing or registration law, or the right of licensed professional engineers, or their employees or subcontractors, to lawfully practice soil classification, foundation engineering, geotechnical engineering, soils mechanics, or other professional engineering as provided by title 62, chapter 2 or registered architects from lawfully practicing architecture as provided by title 62, chapter 2.

SECTION 9. An application for licensure as a soil scientist shall indicate the applicant's education and provide a detailed summary of soil science work. The application shall be accompanied by an application fee fixed by the board, and shall include a certified transcript.

SECTION 10.

(a) To be eligible for a certificate of licensure, an applicant shall meet each of the following minimum qualifications:

(1) Be a graduate of an accredited college or university with at least a

Bachelor of Science Degree in soils, agronomy or a closely related field. The applicant shall have successfully completed a minimum of fifteen (15) semester hours of course work in soil science;

(2) Have at least three (3) years of soil science professional experience. Any combination of the following types of education and experience qualify toward accumulating the required three (3) years:

(A) Masters of Science degree in soils, agronomy or a closely related field and two (2) years of professional experience;

(B) Doctor of Philosophy degree in soils, agronomy or a closely related field and one (1) year of professional experience; or

(C) Each year of teaching or soil science research by persons teaching upper-level soil science courses at the college or university levels; provided, that such teaching or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to a year of professional experience;

(3) Have successfully passed such examination or examinations developed or determined by the board to assess adequately the knowledge and skills that are common to the competent practice of soil science as a profession. The board shall waive the examination requirement for licensure as a soil scientist for an applicant who makes written application to the board not later than January 1, 2009, and who otherwise meets the requirements of this subsection (a).

(b) A person who meets the requirements of subdivisions (a)(1) and (2) and who is:

(1) TDEC approved prior to January 1, 2009;

(2) An employee of the Federal Government 470 series;

(3) A soil scientist employed of the state Tennessee; or

(4) A member of the Soil Scientist Association of Tennessee certified list

prior to January 1, 2009;

shall be deemed to have met the requirements of subdivisions (a)(1), (2) and (3).

Such person shall be issued a certificate of licensure when renewal is due under the established renewal cycle upon applying for and meeting all requirements for renewal. The board shall assign the registration number of the registration certificate as the certificate of licensure number. Any person holding an active certificate as a registered soil scientist or licensed professional soil scientist prior to January 1, 2009 who does not renew such certificate when renewal is due shall be required to apply for licensure under this part and meet all requirements of subsection (a) except that a reasonable period of time shall be accorded by the board for late renewals.

SECTION 11. A person holding a license or registered to practice soil science issued by proper authority of a state, territory, or possession of the United States, the District of Columbia, on the basis of comparable licensing or registration requirements and who, in the opinion of the board otherwise meets the requirements of this part, based on verified evidence may, upon approval of an application for licensure, be licensed without further examination, provided that the state, agency, or country issuing the license or certificate of registration has entered into a reciprocity agreement with the board, is part of a general reciprocity agreement among all applicable states, or has established some other form of mutual recognition of licensure or comity with the board.

SECTION 12.

(a) The board shall issue a certificate of licensure, upon payment of a fee prescribed by the board, to any applicant who complies with the requirements of this part. Certificates of licensure shall state the full name of the licensee, bear a certificate of licensure number, and be signed by the commissioner or the commissioners designee under the seal of the board.

(b) A certificate of licensure shall be valid for a period of two (2) years. A fee prescribed by the board shall be imposed for each late certificate of licensure renewal.

(c) A new certificate of licensure may be issued to replace any certificate of licensure lost, destroyed, or mutilated, subject to the rules of the board and payment of a fee prescribed by the board.

(d) Upon a written request accompanied by a fee prescribed by the board for change in status, a licensee shall be placed on retired or inactive status. No retired or inactive licensee shall engage in practicing soil science or services for which licensure as a soil scientist is required by this part. The board shall prescribe rules outlining the procedure for placing a licensee in retired or inactive status and subsequent reinstatement to active status.

SECTION 13. A licensed professional soil scientist, upon issuance of a certificate of licensure, shall obtain a seal of the design authorized by the board, bearing the licensee's name and the legend "licensed professional soil scientist" and identifying the state of Tennessee. All drawings, reports, maps, or other papers or documents involving practicing soil science as defined in this part, that have been prepared or approved by a licensed soil scientist or a subordinate employee under such soil scientist's direction for the use of or for delivery to any person or for public record within this state, shall be signed by the licensee and impressed with the licensee's seal. These acts shall indicate a licensee's responsibility for such drawings, reports, or other papers or documents.

SECTION 14.

(a) The commissioner shall establish a soil science advisory committee composed of five (5) members, to be referred to hereafter as the "SSAC".

(b) In making appointments to the committee, the commissioner shall strive to ensure that the SSAC includes at least one (1) female, at least one (1) member of a racial minority, and at least one (1) person who is at least sixty (60) years of age. The commissioner may also strive to ensure that the soil scientist members are from each of the following professional groupings:

(1) Academia;

(2) Private consulting; and

(3) Government.

(c) The SSAC shall be administratively attached to the registered land surveyor's board.

(d) SSAC members shall receive no compensation but shall be reimbursed for actual travel and other expenses incurred in attending each meeting and in performing any other duties provided for in this part. All reimbursement for such expenses shall be in accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(e) The SSAC shall assist the commissioner with the promulgation of rules for the implementation of the requirements of this part.

SECTION 15. In addition to other powers and duties specified in this part, the board, under advisement from SSAC, shall:

(1) Promulgate rules and regulations necessary to carry out the provisions of this part in compliance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(2) Design and adopt an official seal for licensed professional soil scientists;

(3) Set the amount of all fees required by this part;

(4) Identify and approve continuing education programs for persons regulated by the board under this part, and promulgate rules requiring continuing education;

(5) Receive, administer, and account for all moneys derived under the provisions of this part, and transfer these funds to the state treasurer who shall keep such moneys in a fund to be known as the "Soil scientists Fund." Such fund shall be used to defray expenses incurred in the administration of this part, provided, however, that any unencumbered or unexpended balance of this fund remaining at the end of any fiscal year shall revert to the general fund;

(6) Prepare, administer, and grade examinations required by this part. The

board shall have the authority to adopt or recognize, in part or in whole, examinations prepared, administered, or graded by other organizations, on a regional or national basis, that the board determines are appropriate to measure the qualifications of an applicant for licensure as a soil scientist, provided that the examination questions and correct answers, and any individual applicant's completed examination are available to the board, and that the board retains the authority to determine a passing grade for purposes of licensure in this state; and

(7) Have such other powers and duties as are necessary to effectuate the provisions of this part.

SECTION 16.

(a) The board shall keep a public record of its proceedings and a register of all applicants for licensure.

(b) All official records of the board, the department, or affidavits by the commissioner as to the contents of such records shall be prima facie evidence of all matters required to be kept therein.

(c) Except as otherwise provided by this part, the following shall be treated as confidential and may not be disclosed except by order of a court of competent jurisdiction or by permission of the applicant:

(1) Applications and other personal information submitted by applicants, except to the applicant, the board, department, its staff, or the SSAC; and

(2) Information submitted by a reference concerning an applicant, except to the board, department, its staff, or the SSAC.

SECTION 17. The board shall maintain a roster showing the names and places of business of all soil scientists licensed in this state. Copies of this roster shall be placed on file with the secretary of state and furnished to any licensee upon request free of charge or to the public upon request and payment of a fee, not to exceed cost, to be established by the board.

SECTION 18. The board shall promulgate a code of professional conduct that shall be made known in writing to every licensee and applicant for licensure under this part. The

department may revise and amend this code of ethics from time to time and shall forthwith notify each licensee in writing of such revision or amendments.

SECTION 19. Any person may file a complaint with the commissioner against a licensee alleging fraud, deceit, gross neglect, incompetence, or misconduct. Complaints shall be made in writing.

SECTION 20.

(a) The board shall have the power to suspend, revoke, or refuse to renew the certificate of licensure of any licensee who:

(1) Is found to have been convicted of:

(A) Any fraud or deceit in obtaining a certificate of licensure;

(B) Any felony;

(B) Any unlawful act as set forth in this part; or

(2) Who is found guilty of fraud, deceit, gross neglect, incompetence, or misconduct in the practice of soil science as a licensed professional soil scientist.

(b) Any such action by the board to suspend, revoke, or refuse to renew a certificate of licensure shall be taken after a hearing held in accordance with the procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) Any administrative or judicial review of such action shall likewise be in accordance with the procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The board may seek relief at law or equity to restrain or enjoin any act or practice in violation of this part, or of any rule promulgated to effectuate the purposes of this part. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine lawsuits seeking such relief. No bond shall be required for the prosecution of the lawsuit or for the issuance of an injunction.

(e) Members of the board are officers of the state in carrying out the duties imposed by this part and, as such, shall have the full measure of governmental

immunity provided by law.

SECTION 21. The board may reissue a certificate of licensure to any person whose certificate of licensure has been revoked upon written application to the board by the applicant, showing good cause to justify such reissuance.

SECTION 22. Legal counsel shall be provided by the division of regulatory boards.

SECTION 23.

(a) A violation of this part is a Class B misdemeanor.

(b) In addition to, or in lieu of, any other lawful disciplinary action under this part the commissioner may assess a civil penalty not exceeding one thousand dollars (\$1,000) per violation. All penalties owed under this part shall be paid to the board for deposit into the treasury of the state of Tennessee and shall accrue to the state and may be recovered in a civil action in the name of the state in any court of record in the county where the violation is alleged to have occurred.

(c) Any civil penalty shall be assessed in the following manner:

(1) A notice of such assessment shall be sent to the person receiving it by certified mail, return receipt requested;

(2) Any person against whom an assessment has been issued may petition the commissioner for a review of the assessment;

(3) The petition for review shall be in writing, and shall be filed no later than thirty (30) days after the notice of assessment is received;

(4) If a petition for review of the assessment is not filed within thirty (30) days after the date the notice is received, then the violator shall be deemed to have consented to the assessment and it shall become final; and

(5) If a petition for review of the assessment is filed as provided by this section, then the proceedings on such appeal shall be conducted in accordance with the provisions set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 with respect to the conduct of contested cases.

SECTION 24. Pursuant to § 4-29-118(a), the soil science advisory committee shall terminate on June 30 of the second calendar year following the year in which the commissioner first makes appointments to the committee.

SECTION 25. Tennessee Code Annotated, Section 68-221-409, is amended by deleting the section in its entirety.

SECTION 26. If any provisions of this act or the application thereof to any person or circumstances is held invalid by any court, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provisions or applications; and to this end the provisions of this act are declared to be severable.

SECTION 27. For the purposes of the promulgation of rules and regulations, the provisions of this act shall take effect on becoming a law, the public welfare requiring it. The provisions of Section 14 shall take effect on becoming law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2009, the public welfare requiring it.